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Annexure III : Terms and Conditions for investment in JV/WOS abroad under EEFC Fast Track Window

Terms and conditions for investment in JV/WOS abroad under EEFC Fast Track Window

[Paragraph 9A.5(v)]

1. In case the proposed investment or commitment for investment requires approval under the Companies Act or any other law/policy for the time being in force, it shall be the responsibility of the Indian promoter company to obtain such approval from the appropriate authorities failing which they shall be liable for failure to comply with the provisions of such law/policy.

2. The Indian promoter company shall repatriate to India in free foreign exchange through the normal banking channel dividend, net of taxes, due to them from the JV/WOS within a period of 60 days from the date after it is declared/approved by the Board of Directors/shareholders of the foreign concern. Similarly, all other entitlements due to them from the JV/WOS by way of royalty, technical know-how fees, etc. should be repatriated to India within a period of 60 days from the date they become due.

3. After implementation of the project, the Indian promoter company shall submit every year to the Regional Office of the Exchange Control Department of Reserve Bank (RBI), under whose jurisdiction its registered office is situated, the following documents within 30 days from the expiry of the statutory period for the finalisation of the audited annual accounts as applicable in the host country.

(i) Annual Performance Report (in duplicate) in form APR on the functioning of the JV/WOS together with a note on the basic features of the progress and achievements on the basis of original/revised projections and the particulars of amounts drawn from the authorised dealer under the EEFC Fast Track Route.

(ii) Certified true copies (in duplicate) of audited Balance Sheet and Profit and Loss Account together with the Directors' Report on the working of the overseas JV/WOS during the year.

The statutory period should be certified by an independent Chartered/Public Accountant of the host country. In case there is no such statutory period, the said documents/reports shall be submitted within six months of the close of relevant accounting period of the JV/WOS.

4. The Indian promoter company shall promptly report to the concerned Regional Office of RBI the amount repatriated to India by way of dividend and other entitlements immediately on their receipt together with the bank certificate(s) in support thereof.

5. The Indian promoter company shall also obtain specific permission of the concerned Regional Office of RBI under section 19(1)(e) of FERA 1973, to hold shares, including shares received by way of rights/bonus issue, of the overseas JV/WOS. For this purpose, as soon as the share certificates are received by the Indian promoter company, they should apply to the concerned Regional Office in form FAD 2 through the concerned authorised dealer approving the investment citing the unique identification/approval number given by Reserve Bank together with the original/s (which will be returned after verification) and photocopies of the share certificates issued by the JV/WOS. The Indian promoter company should ensure that the share certificates are issued to them within three months from the date of making the equity contribution. They shall also file an Annual Return of Foreign Currency Shares held in the foreign concern as at the end of each calendar year in the prescribed form FAD3 latest by 15th January of the succeeding year to the concerned Regional Office of the Reserve Bank.

6. The Indian promoter company is further advised to submit to the concerned Regional Office the

following documents:

(a) a certified copy each of the Joint Venture agreement with the foreign collaborator(s) (in respect of Joint Venture company only) as soon as it is finalised, but in any case not later than 60 days from the date of incorporation of the foreign concern; and

(b) a certified copy each of the Certificate of Registration/Incorporation, Memorandum and Articles of Association of the foreign concern within 60 days from the date of first remittance from India.

7. In case of approval for additional investment from EEFC funds in an existing JV/WOS, already approved by the Government of India/RBI, financial commitments regarding repatriation of dividend entitlements and non-equity exports and other requirements as indicated in the relative approval letter issued by Government of India/RBI for the original investment shall continue to be in force.

8. While a first generation overseas JV/WOS established by way of remittance exclusively from EEFC account as allowed by an authorised dealer under the EEFC Fast Track Window can freely set up second and subsequent generation companies, their particulars shall be furnished to the Reserve Bank in the Annual Performance Report in form APR referred to at Condition No.3 above.

9. In case the Indian promoter company desires to extend any fund/non-fund based investment facility to the overseas JV/WOS in excess of U.S.\$ 15 mn. out of the EEFC accounts (inclusive of investment approved by RBI), a specific application is to be made to RBI to obtain approval as per the existing procedure.

10. All expenses incurred by the Indian promoter company in connection with the work of the JV/WOS, including the expenses of Indian directors for attending the Board meetings, should be borne by the JV/WOS.

11. For disinvestment of equity holding in the overseas JV/WOS, the Indian promoter company should apply to Central Office of RBI alongwith share valuation and justification for sale price as certified by a Chartered Accountant.

12. No agency commission shall be payable to the JV/WOS against the exports made by the Indian promoter company towards equity investment. Similarly, no agency commission shall be payable to a trading JV/WOS if the Indian promoter company makes direct exports to it, on outright basis.

13. The Indian promoter company shall comply with such further directions/instructions which may be issued by RBI/Government of India from time to time.

14. The unique identification/approval number given by Reserve Bank should be quoted in all correspondence with RBI and the authorised dealers.

15. If the terms and conditions stipulated herein as well as in the Guidelines for direct investment in Joint Venture/Wholly Owned Subsidiaries Abroad issued by Ministry of Commerce, Government of India vide their Notification Nos.4/1/93-EP(OI) dated 17.8.1995 read with 4/1/93-EP(OI) dated 7.11.1996, 26.3.1997 and 4/3/97-EP(OI) dated 22.8.1997 and further amendments issued from time to time are violated, or if RBI is satisfied that it is in the public interest to do so, the approval would be liable to be revoked and it shall be without prejudice to any further action that may be taken under FERA or any other law/policy in force, including requiring the Indian promoter company to disinvest its share holdings and remit all proceeds and other entitlements to India within a stipulated period.